

Notes from January 29 are in italics.

Notes from March 12 and 18 are in Arial font.

Bold Items indicated follow up tasks

Misc. Items

The Counties' RFP for an engineering review of NTH's reports will select an engineering firm within 3 weeks. Part of that scope for work includes an inspection of the two pump stations. The Counties will schedule that through Sam Smalley.

The Water Board approved the settlement on Wednesday, January 28. The matter will be forwarded to City Council for action. It is not clear the procedure Council will follow to adopt, it may go to committee or may be placed on the agenda for action.

Bill Misterovich identified two facilities not included on the list of assets to be transferred that was attached to the Letter of Intent. Mark Jacobs stated that list will be update to correct/include any omitted or mis-described facilities.

Action on Due Diligence Items

The person responsible and nature of follow up for each item is annotated below in italics.

The parties will have a follow up meeting on Wednesday, February 18 at 10 a.m., at DWSD to go over status of producing engineering/operational items. Bart Foster will distribute his response in batches and expects to begin doing so before February 18. He can provide a progress report by telephone during the meeting.

Debt and Rates

1. Provide a detailed report, covering the FY 2008-09 and 2009-10 rate years (budgeted amounts) and the FY2006-07 and FY2007-08 rate years (actual amounts), for all meters, pump stations, interceptors and any appurtenant facilities that will be transferred as part of the Oakland Macomb Interceptor System (the Northeast pump station and meter(s) at the Northeast pump station should be included), setting forth for each facility:



Detroit_902125_2

DET-Claim No. 3683-000325

- On March 12, Bart provided a multi-page breakdown of OMI and Macomb O&M costs. He will provide a breakdown of the debt behind the debt service charges billed to the OMI.
 - Bart/DWSD will complete analysis of Garfield pump station costs. It is presently thought that these represent electricity charges for meters in the vicinity of the Garfield interceptor.
 - The detailed cost support reports provided by Bart do not appear to include labor and other costs. DWSD will check. There were other inconsistencies which Bart/DWSD will check as well.
 - Bart/DWSD will identify meter maintenance costs for meters on OMI and Macomb systems.
- (a) all outstanding debt, (including for each bond, the date of original issue and refinancing (if applicable), and the final payoff date)
- (i) The report of debt should indicate the individual bond issue(s) associated with each facility, and each facility's allocated share of the specific bond issue as included in rate model for each year
- (b) the debt service allocated to Macomb County and to the Clinton-Oakland District,
- (c) actual or budgeted operating and maintenance expenses,
- (d) extraordinary repair expenses,
- (e) any allocated overhead, and
- (f) any other costs charged to these facilities.
2. Provide a detailed accounting and documentary support for all charges associated with the facilities and included in the Macomb County and Clinton-Oakland sewer rates for the past 6 years.

Bart, Rafael and Woodrow will assemble this information.

See comments under Item 1.

3. Provide an example rate recalculation for the new entity to be created to own and operated the Edison Corridor interceptor (the "Entity") for the rate year 2009-2010 together with supporting detail using the same flows and budgets as used in developing the actual 2009-10 rates.

4. If it is DWSD's position that any of the debt or operating and maintenance costs for the OMI or Macomb interceptors will not be eliminated from calculation of the rates for the new entity, DWSD will so indicate and, if so, explain. If these debt and operating costs are not included in the sewer rates for the new entity, DWSD will disclose whether it proposes that part or all of such charges will be redistributed to any other customers and, if so, explain how it proposes to do so in the context of the rate calculation process.

Jacobs, Walter & Foster will address.

Remains to be done by DWSD. Need a written response from DWSD that the debt service cost of the retired debt will not be included in suburban rates.

5. Is it Detroit's position that that part of PCI-5 within the City of Detroit and the Northeast pump station would be subject to Detroit's real and personal taxes? If so, identify the book value of those facilities.

Jacobs, Walter & Foster will address.

DWSD proposes that PCI-5 be bifurcated and only the portion north of 8 Mile be transferred. If so, concept was discussed of the new OMI entity entering into a long-term contract to operate and maintain the piece of PCI-5 in Detroit.

DWSD proposes to keep Northeast pump station and to negotiate an agreement on operating protocols. Counties repeated their desire to acquire the pump station because they see it as an integral part of the OMI system and because they are concerned that it and the Edison Corridor not be operated to achieve stormwater retention without some form of compensation to the Counties. Detroit responded that under existing ratemaking procedures it did not meet the criteria for "common to all." They are prepared to agree to accept contract flow consistent with the terms of the new contract, whatever those terms are. Macomb requested information from DWSD that would indicate how the pump station is operated in wet weather events in order to have the facts to determine whether, at least from the Counties' point of view, the pump station and Edison Corridor are being managed in a fashion to provide wet weather storage. **DWSD did not commit to provide the requested information but said it would get back to Macomb.** Attendees agreed the issue of pump station ownership may need to be referred to the Directors' Council for resolution.

The back flush flow from the Northeast Water treatment plant flows into the pump station via a metered connection. It was represented that this flow was somehow adjusted from the flow allocated to the OMI. **A better description of the manner in which this adjustment was made was requested.**

DWSD's position is that any OMI facilities in Detroit would not be subject to real and personal property tax. Further, this point is moot if no facilities within the City are transferred.

6. State whether Detroit has a policy of imposing payments in lieu of taxes on publicly owned tax exempt infrastructure.

Inspection, Maintenance and Repair of the Oakland Macomb Interceptor

NTH (Swaffar) provided a memo (January 27, 2009) summarizing documents NTH has responsive to the Due Diligence list items related to tunnel inspections and condition. Hupp will review. NTH will assemble and make available for review the boxes previously produced for the 2004 collapse litigation discovery. Hupp will review. Based on that review, various requests below will be refined and refocused.

7. DWSD's inspection and maintenance protocols, plans, practices or procedures for the facilities for the period 1981 to the present.

Sam Smalley will do.

There are no protocols or records for interceptor inspections beyond NTH's post 2004 work. The heavy maintenance yard was discontinued in 2004 and there has been turnover in personnel. As a result no records have been located.

DWSD has not pulled the Northeast pump station records.

Manuals etc. for Clintondale are available at the Huber location with a review by Jim Pistilli to be arranged through Sam Smalley. To the extent that there are electronic records that have not been printed out already, Jim will discuss with Sam.

8. All operating manuals for the equipment located at the facilities.

Sam Smalley will do. He will copy those available electronically and assemble paper versions and wait for Counties' decision (Buchholz) whether to have copies made or to review them.

Shukla brought copies of operating manuals for the Clintondale to the March 18 meeting.

9. Inspection and condition reports documenting the condition of the facilities during the period 1999 to the present.

The Counties have field inspection reports produced in the 2004 collapse litigation (about 30-40 reports), the 3 recent NTH inspection reports and supporting computerized files, and the Spalding DeDecker 2003 inspection report of the Garfield Interceptor (15 to 18 mile road) and Jenny reports (PCI-7 (1981), PCI-12A (1981) and Rehab. Of Interceptor Sewers Legal Assistance Final report (1983). Shukla/Smalley will provide any other inspection reports

NTH has produced its reports to Bodman. Shukla says DWSD does not have anything beyond what NTH has.,

Smalley will do. He will start with the electronic work order records. After review by Buchholz, a decision will be made whether paper work orders, etc. from prior years will be inspected.

These documents for Clintondale are available at Huber. Records for Northeast has not been assembled. No records for the interceptors.

11. Plans or recommendations for equipment replacement, repair, or upgrading over the next 5 years.

The Counties have the 3 NTH reports and Macomb has a copy of DWSD's evaluation of the Clintondale pump station. DWSD will provide any plans or recommendations for other repairs or improvements including the new meter at the Northeast pump station.

Plans/proposals for ongoing OMI improvements and Clintondale have already been provided to Macomb or via documents at NTH.

Other than that, there are two meter projects pending: OCS-2 and a Macomb meter, ID unknown. DWSD/Shukla will check and report on the status of both of these projects

12. All current or pending contracts for any types of engineering, maintenance, repair or construction activities associated with the facilities and all contracts for work completed in the past 5 years or work now underway or expected to begin before December 31, 2009.

Smalley & Shukla. This will consist of invoices and supporting vouchers for work performed under PC749 and 759 contracts. Smalley stated there are no specific scopes of work for work performed.

At the meeting, Shukla provided a manila files with responsive documents.

There was a recent minor project to replace carbon filters for odor control at several locations. No need to provide these records.

13. Engineering and construction contracts, work plans and schedules for repairs now planned or underway for OMI and Macomb interceptors plus all daily reports, inspection records and the like for any investigation or repair performed on these interceptors since January 1, 2006

Smalley & Shukla plus NTH.

Reviewed and copied as appropriate by Bodman at NTH.

Smalley & Shukla

None, with the possible exception of the new generator at Clintondale. Any related document would be in Clintondale materials brought by Shukla to the meeting.

DWSD's standard contract provides for a one-year warranty from time of substantial completion.

15. Any insurance policies of any kind which may provide coverage for the facilities, the equipment, or claims arising out of the ownership or operation of the facilities.

Probably no insurance but Woodrow will check.

Woodrow confirmed, no insurance.

16. Identify all personnel in the past 5 years who have had direct staff supervision or engineering responsibility for the facilities.

Key personnel are Sam Smalley, Terry King, Ramesh Shukla and Martin Craig.

In addition, Lou Jarvis.

17. Identify all contractors in the past 5 years who have provided significant services related to inspection, operation, repair or maintenance of the facilities (excluding the major interceptor repair and maintenance activities undertaken since 2004) and identify the project manager for each contractor.

Smalley & Shukla

Contract documents were produced by NTH to Bodman.

18. Provide copies of all budgets prepared in the past 5 years for the operation, maintenance and repair of the facilities.

Bart stated this work is not budgeted at the facility level. DWSD (Bart and Woodrow) will provide actual costs for the past 5 years.

Woodrow will see whether meter costs can be broken out.

19. The NTH January 2008 for PCI 8 – 11 states at p.3, "Concurrent with the submittal of this report we are undertaking additional investigations to evaluate contributing conditions in the OMIS network. The results of those investigations will be provided in a supplemental report(s)." Are there any supplemental reports related to PCI 8 -11? Essentially the same statement is made at page 62 of the NTH report for PCI 5 – 7. Are

NTH has provided to Bodman.

20. Records for energy use for the past five years at any facilities for which energy usage/consumption records are available.

Chirolla will provide energy records for the Clintondale and Northeast pump stations. He will provide electrical records for meter electrical costs if they are not minimal.

Rafael has provided a disk with electrical billing records for Northeast and Clintondale together with a 2 page annotation showing how DWSD allocated NE pump station charges between water and sewer.

Records of Construction of OMI and Macomb Interceptors

For each interceptor segment or other facility and for the repairs associated with the 1978, 1980 and 2004 sewer collapses, please provide:

See comment above about NTH memo and production of boxes of documents.

Items 21, 22 and 23. NO records beyond what NTH produced to Bodman.

21. Preliminary and final design reports, engineering and construction contracts, final specifications and plans, design calculations, shop drawings, "as built" plans and specifications, change orders and inspectors' reports, daily reports and final inspection reports for each of the facilities
22. All geotechnical and groundwater studies, reports and data related to the facilities or their vicinity.
23. Copies of all contracts with engineers, general contractors and companies principally responsible for the tunneling and construction of each segment and the repair of the 1978, 1980 and 2004 collapse.
24. Copies and indices of all leases, easements, licenses and other right-of-way documents for the real estate to be transferred or as may be required in order to operate the facilities together with all associated title work and title insurance, and all documents evaluating DWSD's right to use the right of way and any defects in such right or title

Walter and Shukla will review and provide general report of what is available and how organized.

A printout of ROW files was provided. Each file has a box or more of supporting documents. Total boxes is between 200 and 300. Boxes are at 6th Floor, Madison Building. Contact is Craig Stanley, 967-1540 (O); 999-0649 (cell). Counties will develop a plan to deal with ROW issues.

the 1978, 1980 and 2004 sewer collapses, documents and photographs describing the conditions within the section of the interceptor at or before collapse and after the collapse, and engineering reports and studies with regard to alternatives evaluated to repair the collapse and the basis for selecting the method of repair which was undertaken, including but not limited to, studies by U.S. COE, Jenny Engineering, Smith Hinchman & Grylls, NTH, and Mueser, Rutledge, Johnston & Desimone.

Obtained from NTH. DWSD has nothing else.

26. All documents related to Jenny Engineering's inspection and assessment in the 1980-1983 time frame of the condition all of the OMI and Macomb Interceptors, and DWSD's contract(s) with Jenny Engineering to perform those services.

NTH has Jenny volumes 1, 2 & 4 and will provide if they do not cover PCI-7 & 12A. DWSD (Shukla) will check files for any other Jenny materials.

Obtained from NTH. DWSD has nothing else.

Permits, Compliance and Liabilities

27. Identify all federal, state or local approvals, licenses, permits, other than DWSD's NPDES permit, required to own, occupy or operate the facilities.

Chirolla will check for AQ permits for generators, any registration forms for any USTs and any other permits needed to operate. One-time permits related to right of way access are not needed. Copies of permits under Part 41 and/or 399 are desired in order to document that all design modifications were MDNR/MDEQ approved.

Clintondale air permit is in the Clintondale materials provided. NE pump station probably also has an air permit for its generator.

28. State whether the facilities conform to local zoning and building codes and whether any special use or similar permits are required.

DWSD will check. Responsible person not identified.

DWSD represents that facilities conform.

29. Describe any regulatory complaints or notices of violations issued on Detroit or DWSD in the past 5 years arising out of or related to the operation of the facilities.

30. Describe any civil claims asserted or threatened in the past 5 years arising out of the operation of the facilities which have been asserted against Detroit/DWSD or of which Detroit has knowledge.

Jacobs & Walter will address.

Three claims. #1 - claims and suits arising out of 15 Mile collapse; #2, "Collins" business interruption claims because of construction delays; #3, 21/ Garfield suit. DWSD is retaining liability on items 1 and 2. No further information requested by Counties.

31. Describe any circumstances of which DWSD or Detroit may be aware indicating that the facilities are not in compliance with environmental or employee health and safety laws and regulations.

Shukla & Smalley.

Not aware of any MIOSHA inspections. DWSD makes no representation as to MIOSHA compliance and recommends facility compliance surveys. **DWSD will check to see if there is any relevant safety information in its internal files.**

32. Describe any facts of which DWSD or Detroit is aware which would give rise to or support a claim against any contractor or other person arising out of or related to the facilities and state whether such claim been asserted.

Jacobs & Walter will address.

DWSD is not aware of any known, threatened or pending claims other than those identified in Item 30.

33. State whether PCBs, asbestos and lead-based paint are now or ever have been present at or on the facilities and provide any reports/plans/investigations re same.

Shukla.

No information one way or the other on PCBs. Shukla provided an asbestos and Pb assessment for the Clintondale station.

34. Disclose any condition of which DWSD is aware in which some part of the facilities is not in full compliance with applicable building, safety and OSHA/MIOSHA regulations.

Smalley.

"Don't know".

See Clintondale assessment referenced above.

36. Provide copies of all plans required under environmental regulations which may apply to the facilities (e.g., an SPCC plan)

Shukla & Smalley.

No plans for Clintondale. No info on plans related to Northeast.

37. Identify the location, size and contents of any ASTs or USTs now or ever previously located at the facilities.

Smalley.

There is an AST for the generator at Clintondale. Details are in the Clintondale materials provided. No information provided re Northeast.

38. Describe any workers compensation claims arising out or related to injuries suffered by employees while working at or associated with the facilities that have ever arisen.

Walter

Information still to be provided.

39. Identify any areas of known or suspected contamination at any of the facilities and provide any Phase I or Phase II environmental site assessments or similar reports addressing any of the facilities.

Smalley

None

40. Provide copies of any release or off-site migration notices related to the facilities and copies of any manifests for hazardous materials disposed of from the facilities.

Smalley

None